

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DOUGLAS WILBERGER,)	CASE NO. 1:10 CV 2400
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
ADULT PAROLE AUTHORITY, et al.,)	<u>AND ORDER</u>
)	
Defendants.)	

On October 21, 2010, plaintiff *pro se* Douglas Wilberger filed this 28 U.S.C. § 1915(a)(3) action against Ohio Department of Rehabilitation and Correction Director E. Moore, Adult Parole Authority Officer Jerry Grimms, Adult Parole Authority Officer Tim Mircle, and "State of Ohio Prosecutors."¹ While unclear, the complaint appears to allege defendants have brought escape charges against parolees and probationers who fail to report, despite the fact these parolees and probationers are not violent sex offenders.

A district court is expressly required to dismiss any civil action filed by a prisoner seeking relief from a governmental officer or entity, as soon as possible after docketing, if the

¹ Although the complaint also purports to be brought by Tito Rivera, it is not signed by Mr. Rivera.

court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A; Siller v. Dean, No. 99-5323, 2000 WL 145167 , at *2 (6th Cir. Feb. 1, 2000).

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Id.* A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.* Nor does a complaint suffice if it tenders naked assertion devoid of further factual enhancement. *Id.* It must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.* A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*

Even liberally construed, the complaint does not contain

allegations reasonably suggesting plaintiff might have a valid claim. See, *Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716 (6th Cir. 1996) (court not required to accept summary allegations or unwarranted legal conclusions in determining whether complaint states a claim for relief).

Accordingly, the request to proceed *in forma pauperis* is granted and this action is dismissed under section 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/Dan Aaron Polster 12/15/10
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE